

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

Kathy Merrick

v.

Civil No. 11-cv-447-PB

Town of Dublin &  
William Raymond

O R D E R

Kathy Merrick, a former assistant to the Town Administrator of Dublin, New Hampshire, brings suit against the Town of Dublin ("Town") and its then-Administrator, William Raymond. Her claims revolve around the allegation that Raymond created a hostile work environment that resulted in her constructive discharge. She seeks to hold Raymond and the Town liable under 42 U.S.C. § 1983 for violating her Fourteenth Amendment right to Equal Protection. She also asserts state law theories of liability based on discrimination and retaliation. Seeking dismissal of the Equal Protection claims, defendants have filed a motion for judgment on the pleadings.

Merrick's complaint is short on detail, alleging in generalized fashion that Raymond engaged in a continuous pattern of verbal abuse towards her that involved sexist and derogatory terms. Defendants challenge the sufficiency of her allegations

in their motion for judgment on the pleadings, arguing that her complaint does not state with sufficient particularity the facts necessary to support her Equal Protection claims. Merrick has responded by submitting an objection that is supplemented by an investigative report. The report describes Raymond's treatment of Merrick and other female employees in far more detail than the general allegations in Merrick's complaint.

Ordinarily, a court would not consider such evidence on a motion for judgment on the pleadings. [Fed. R. Civ. P. 7, 12\(c\)](#); see [Collins v. Univ. of N.H.](#), 664 F.3d 8, 13-14 (1st Cir. 2011) ("To survive a motion for judgment on the pleadings, the complaint must plead facts that raise a right to relief above the speculative level[.]" (internal quotation marks and citation omitted)). It appears, however, that Merrick is in possession of facts that would put flesh on her rather conclusory allegations. Accordingly, I believe it prudent at this juncture to allow her to amend her complaint to detail, with appropriate specificity, those facts that she believes would support her Equal Protection claims.

Merrick shall have fourteen days from the date of this order to file an amended complaint. If, after that filing, defendants continue to believe that Merrick has failed to

satisfy her initial burden, they may again file a motion seeking dismissal of her Equal Protection claims. The motion for judgment on the pleadings ([Doc. No. 11](#)) is denied without prejudice.

SO ORDERED.

/s/Paul Barbadoro  
Paul Barbadoro  
United States District Judge

June 8, 2012

cc: Stephen T. Martin, Esq.  
Andrew B. Livernois, Esq.  
Brian J.S. Cullen, Esq.